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"Tip of the Month"

The Irrevocable Trust

Many people are aware that the revocable living trust avoids probate, making revocable trusts popular for that reason and other reasons. The irrevocable trust is also interesting and often promoted as a method to protect assets from taxes and the cost of long-term care. Revocable and irrevocable trusts are very different.

Revocable means changeable, which also means the grantor of the trust continues to have complete control over all the assets in the trust. The assets still belong to the grantor, and are not shielded from creditors and claimants.

Irrevocable means what it says. Once the asset is in the irrevocable trust, the grantor loses all control over the asset. The grantor gives up all indicia of ownership. Grantor does not own that asset anymore, and cannot get it back.

People make irrevocable trusts to take assets out of their name. This is essentially a gift, and is subject to the five-year look-back period for Medicaid eligibility to pay for long-term care. Parents often name their children as beneficiaries. Irrevocable trusts must have independent trustees, not the children.

The grantor can make special provisions in the irrevocable trust for minor beneficiaries to wait until they are older to get access to their inheritance, for disabled beneficiaries with special needs, or for troubled beneficiaries with spendthrift provisions and incentives for clean living.

The assets of an irrevocable trust are no longer in the grantor's estate. These assets when placed in the trust early enough are not countable assets for Medicaid eligibility. They are not subject to the federal estate and gift tax when the grantor's estate value exceeds $5 million ($10 million for couples).

People have to be careful with irrevocable trusts. They must be 100% certain that they will not change their minds if circumstances change. They will not be able to sell the house in this trust if they want to downsize and move into a condo. They cannot get the house back if their beloved daughter beneficiary teams up with an unpopular spouse or partner. If daughter dies, the partner might get the house.

Looking into the crystal ball with an eye on Murphy's Law (whatever can go wrong will go wrong), many people decide that the irrevocable trust is too risky. They might never need a nursing home. They might need the value that comes from that asset. They might imagine circumstances could change to the unexpected.

If you would like more information about irrevocable trusts, asset protection, wills, trusts, probate, or other estate planning topics, please do not hesitate to Contact the attorneys at Mesmer & Deleault by calling (603) 668-1971 or by email at *mailbox@biz-patlaw.com*.

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